

Appeal from a decision of the District Manager, California Desert District, Riverside, California, approving a recreation management plan opening a certain part of the Panamint Dunes to off-road vehicle use.

Reversed.

1. Administrative Procedure: Administrative Review -- Appeals -- Board of Land Appeals -- Federal Land Policy and Management Act of 1976: Land Use Planning -- Rules of Practice: Appeals: Generally

Approval of an activity plan, such as a recreation management plan compiled to implement a resource management plan amendment, is a decision appealable to the Board of Land Appeals. However, approval or amendment of a resource management plan is by regulation 43 CFR 1610.5-2 subject to review only by the Director, Bureau of Land Management, whose decision is final for the Department of the Interior.

2. Administrative Procedure: Administrative Review -- Federal Land Policy and Management Act of 1976: California Desert Conservation Area -- Federal Land Policy and Management Act of 1976: Land Use Planning -- Federal Land Policy and Management Act of 1976: Wilderness

A BLM decision regarding competing uses of public land that is based on a consideration of all relevant factors and is supported by the record will not be disturbed on appeal absent a showing of compelling reasons for modification or reversal. Relevant factors for consideration in a BLM decision opening an area of the Panamint Dunes within a wilderness study area in the California Desert Conservation Area to off-road vehicle use are whether such activity will impair the area's suitability for wilderness preservation or whether unnecessary or undue degradation of the lands and their resources will take place. Where the record does not support the opening because of the potential for unnecessary degradation of cultural resources, the decision will be reversed.

APPEARANCES: Joseph J. Brecher, Esq., Oakland, California, for appellants; Burton J. Stanley, Esq., Office of the Regional Solicitor, Pacific Southwest Region, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Wilderness Society, *et al.* 1/ appeal the May 17, 1984, decision of the District Manager, California Desert District, Bureau of Land Management (BLM), Riverside, California, approving a recreation management plan (RMP) for the Panamint Dunes (Dunes) and surrounding land. The Dunes are located within the California Desert Conservation Area (CDCA) and within Wilderness Study Area (WSA) 127 of the CDCA. The RMP opens a certain area of the Dunes to limited off-road vehicle (ORV) use. Appellants argue that opening that area to ORV use "would cause irreparable losses to a major archeological district and unique wilderness area" (Statement of Reasons (SOR) at 1). They contend that BLM's decision violates section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1982), established BLM policies pursuant thereto, the National Historic Preservation Act, 16 U.S.C. § 470 (1982), the National Environmental Policy Act, 42 U.S.C. § 4321 (1982), and the American Indian Religious Freedom Act, 42 U.S.C. § 1996 (1982).

Appellants assert the Dunes were effectively closed to ORV use in 1973 when BLM adopted its Interim Critical Management Program for recreational vehicle use in the California desert because that program limited such use to designated roads and trails, and none existed in the Dunes. 2/ Subsequently in 1976 Congress passed FLPMA, section 603(a), 43 U.S.C. § 1782(a) (1982), of which required the Secretary to review the public lands for wilderness suitability and section 601, 43 U.S.C. § 1781 (1982), of which created the CDCA and required the Secretary to prepare a land use plan for that area on or before September 30, 1980.

BLM undertook the section 603 review and in May 1978 an area encompassing the Dunes and surrounding areas was designated as WSA 127. (The California Desert Conservation Area Plan 1980 (Desert Plan) at 53-54). Of 137 WSA's in the CDCA, BLM ranked WSA 127 seventh in terms of relative wilderness suitability (Final Environmental Impact Statement and Proposed Plan 1980, (Proposed Plan) Vol. B, Appendix III: Wilderness at 109).

1/ Appellants are the Wilderness Society, Sierra Club, Desert Protection Council, California Native Plant Society, and Timbisha Shoshone Tribe. Mil Thorton, president of the Orange County Threewheelers and R. G. Bates, president of the California Off-Road Vehicle Association, each filed letters with the Board in support of BLM's decision. Neither requested to intervene in the appeal.

2/ In a statement accompanying BLM's answer the District Manager of the California Desert District, Gerald E. Hillier, stated regarding ORV use in the Dunes:

"There was an access route to the Dunes from Lake Hill which was never closed. Rangers did not enforce any closure. The Dunes were not specifically closed in the same manner as Kelso or Algodones. At best their status prior to December 1980 was ambiguous." BLM Answer, Appendix A at 1.

In accordance with section 601 of FLPMA, BLM developed its Desert Plan. As part of that plan, it closed the Dunes to ORV use (Desert Plan at 89), or, as characterized by appellants, "continued the status of Panamint Dunes as closed to ORV use." SOR at 7. The rationale for closure was set forth in the Proposed Plan, Vol. C., Appendix V: Recreation at 250:

The Area has low suitability for motorized vehicle recreation from the standpoint of proximity to users and past and present interest. This fact coupled with resources values which include wildlife, archaeological, Native American, wilderness and scenic quality, form the basis for the decision not to open this area to vehicle use.

In February 1982 BLM invited interested persons to review the Desert Plan and submit any recommendations for proposed amendments to that plan. One of the proposals submitted, designated Amendment 5 by BLM, was to change the ORV status of the Dunes from closed to partially open. Proposed 1982 Plan Amendments and Draft Environmental Impact Statement (Proposed Plan Amendments/Draft EIS) at i. The proponent's rationale for submission of the proposal was "Inyo County has limited opportunities for this type of recreation. Use of the Panamint Dunes would provide an alternative to prevent illegal use of the Eureka Dunes." (Proposed Plan Amendments/Draft EIS at 2-3).

The 1982 Plan Amendments Record of Decision (ROD), issued by the District Manager, California Desert District, on May 17, 1983, with the concurrence of the California State Director, set forth the alternatives considered by BLM. Alternative A was to change 10,550 acres in WSA 127, including the Dunes, from closed to ORV's to open. Alternative B was to change an area of approximately 2,400 acres containing the Dunes to "interim" open by permit. The third alternative, Alternative C, which was the environmentally preferred one, was no action, meaning continuation of the closed status. The District Manager selected Alternative B. 3/ ROD at 25. His rationale was that it would meet "[a]n existing demand for limited recreational use of the dunes. There are no comparable dunes available locally for dune buggy use. Opening the dunes would increase opportunities for this type of recreational use in Inyo County." He further stated that use of the dunes would be monitored to determine any negative impacts and any necessary adjustments made.

In order to implement its plan amendment, BLM prepared its RMP which was approved by the District Manager on May 17, 1984. The RMP reduced the acreage figure adopted in the amendment and opened only 500 acres to ORV use "consisting of just the open sand to the edge of the vegetation." 4/ The District

3/ A final EIS was prepared prior to this decision to open 2,400 acres to ORV use. An Environmental Assessment (EA) was prepared prior to the approval of the RMP.

4/ Under the RMP, ORV use permits would be granted for 15 to 20 ORV's per day. An access route connecting the Dunes to the highway would be established. An overnight campground near the highway would be developed. A monitoring plan, evaluating the impact of ORV use on four sensitive cultural sites would be instituted. The Inyo County sheriff's office would assist in law enforcement of the area.

Manager stated that this area "was found to be the area primarily used by the off-road vehicles when the dunes were used prior to closure in 1980". RMP at 3. The Wilderness Society, et al., filed a notice of appeal of this action by the District Manager.

[1] Before turning to the substantive issues raised by this appeal, we must examine the context in which this appeal arises to determine whether, in fact, appellants have the right to appeal to the Board. Appellants have sought review of the approval of the RMP. Under the resource management planning regulations at 43 CFR Subpart 1610 any person who participates in the resource management planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. 43 CFR 1610.5-2(a). Protests are to be filed with the Director, BLM. 43 CFR 1610.5-2(a)(1). The decision of the Director, BLM, "shall be the final decision of the Department of the Interior." 43 CFR 1610.5-2(b). Thus, these regulations make clear, and the Board has recognized, that approval and amendment of resource management plans are not actions appealable to the Board of Land Appeals. Oregon Natural Resources Council, 78 IBLA 124, 127 (1983); see also Oregon Shores Conservation Coalition, 83 IBLA 1,2 (1984); Order in Santa Fe Pacific Railroad Company, IBLA 85-834 (October 4, 1985).

The planning regulations, however, clearly distinguish between approval or amendment of a resource management plan and implementation of some portion of such a plan or amendment. 43 CFR 1610.5-3(b) provides: "Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or amendment may appeal such action pursuant to 43 CFR 4.400 at the time the action is proposed for implementation." ^{5/} The definition of resource management plan in the regulations at 43 CFR 1601.0-5(k) provides that such a plan "is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations." ^{6/}

^{5/} The language of this regulation confuses the distinction between protests and appeals. Under regulation 43 CFR 4.450-2, a protest is any objection to any action proposed to be taken in any proceeding before BLM, while the right to appeal arises, pursuant to 43 CFR 4.410, when any party to a case is adversely affected by a decision of a BLM official. In California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977), the Board explained the rationale for treating objections to proposed actions as protests. The Board stated:

"When an individual appears for the first time to object to proposed actions, treatment of this person's objections as an 'appeal' effectively forecloses any consideration by the local authorized officer of the merits of the objection, since this Board has consistently held that upon the filing of a notice of appeal the State office loses all jurisdiction over the matter being appealed."

Id. at 385.

43 CFR 1610.5-3(b) allows an "appeal" to be filed "at the time the action is proposed for implementation." To be consistent with 43 CFR 4.450, it should provide for a protest. Of course this regulation does not preclude the appeal right under 43 CFR 4.410.

^{6/} The regulations further provide that "[r]esource management plans are designed to guide and control future management actions and the development

Therefore, in this case the challenged action is actually the implementation of the 1982 resource management plan amendment relating to ORV use of the Dunes. The compilation and approval of the recreation management plan is the activity planning which constitutes implementation. See RMP at 37. Appellants filed a timely appeal from the approval decision. Such a decision is appealable to the Board of Land Appeals.

The first substantive issue we will consider is whether opening 500 acres of the Dunes to ORV use violates section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1982). Under this section the Secretary is required to manage wilderness study lands so as not to impair the suitability of such areas for wilderness preservation, and to take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection.

Thus, in managing WSA's BLM must comply with three statutory mandates under FLPMA: (1) preserving wilderness suitability; (2) preventing unnecessary or undue degradation; and (3) affording environmental protection.

Lands within a WSA are also subject to Exec. Order No. 11989 which governs ORV use in wilderness areas. The order provides:

[T]he respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

42 FR 26959 (May 24, 1977).

Finally, while an area is under wilderness review, and until such time as Congress acts on the WSA's, BLM is required to manage the WSA's pursuant to the Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP) of December 12, 1979, as revised July 12, 1983, 44 FR 72014 (Dec. 12, 1979), 48 FR 31854 (July 12, 1983). Chapter III A. 3. of the IMP establishes guidelines for ORV use, stating:

Recreational use of off-road vehicles (ORVs) may be permitted on existing ways and trails and within "open" areas designated prior to approval of FLPMA (October 21, 1976). The BLM will cooperate with ORV organizations to achieve the least amount of new impact on lands under wilderness review. If

of subsequent, more detailed and limited scope plans for resources and uses." 43 CFR 1601.0-2. These limited scope plans, such as recreation management plans, are identified in the BLM Manual as activity plans. BLM Manual 1601.07 and 1601.12C.

impacts of ORVs, either on or off existing ways and trails, threaten to impair the area's wilderness suitability, the BLM may close the affected lands to the type of ORVs causing the problem. In some cases, time or space zoning, public education, or a rest-rotation system may make a total closure unnecessary.

No lands will be designated as "closed" solely because they are under wilderness review, but if increasing impacts threaten to impair wilderness suitability, the BLM will move to control those impacts and may designate the area as "closed" to the type of vehicles causing the problem, in order to control the impacts.

44 FR 72024 (Dec. 12, 1979).

The IMP also sets forth nonimpairment criteria at Chapter I.B. 2. Activity will be considered nonimpairing if:

(a) It is temporary. This means that the use or activity may continue until the time when it must be terminated in order to meet the reclamation requirement of paragraphs (b) and (c) below. A temporary use that creates no new surface disturbance may continue unless Congress designates the area as wilderness, so long as it can easily and immediately be terminated at that time, if necessary to management of the area as wilderness.

(b) Any temporary impacts caused by the activity must, at a minimum, be capable of being reclaimed to a condition of being substantially unnoticeable in the wilderness study area (or inventory unit) as a whole by the time the Secretary of the Interior is scheduled to send his recommendations on that area to the President, and the operator will be required to reclaim the impacts to that standard by that date.

* * * * *

(c) When the activity is terminated, and after any needed reclamation is complete, the area's wilderness values must not have been degraded so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability or unsuitability for preservation as wilderness. The wilderness values to be considered are those mentioned in section 2(c) of the Wilderness Act, including naturalness, outstanding opportunities for solitude or for primitive and unconfined recreation, and ecological, geological or other features of scientific, educational, scenic, or historical value.

44 FR 72018-19 (Dec. 12, 1979).

Appellants state that "documented opinions of BLM specialists in archaeology and outdoor recreation, as well as an authoritative outside consulting firm all agree that opening the Dunes will cause undue impairment and degradation of wilderness values" (SOR at 25; emphasis in original). Appellants

argue that irreparable damage to archaeological and cultural resources is already taking place in the closed Dunes. The District Manager's decision is not supported by the record, appellants charge.

The District Manager states that he approved opening the Dunes because the other dunes in the area were closed to ORV use and there was an unsatisfied demand for ORV use in that geographic area. He also stated:

BLM maintains a system of closed dunes within the CDCA. This system assures a major dune is preserved in a natural state for its scientific values as well as passive recreation. These are Eureka, Kelso, and Northern Algodones. Panamint Dune lies in the same geographic province as Eureka.

FLMPA, Section 601, mandates multiple use and provision of off road vehicle use where appropriate. In my opinion opening was not inconsistent with these goals, nor did the area require total closure and preservation.

* * * * *

In my opinion, past ORV use had not impaired its wilderness values (or else it would or could not have become a WSA during inventory). It was and is my opinion that managed limited use would not impair its value for consideration. The Dunes have little vegetation and the low pressure vehicle tires would have no effect and certainly not on the overall wilderness values on the 90,427 acres of WSA 127.

Cultural resource values are high in the region. Yet in all of the analyses, the highest values were shown in be south and east of the access road and unrelated to dune usage. (* * * approximately 5 to 8 miles away from the Dunes.) Most of the cultural values found near the Dunes were not identifiable as such to any but a trained archaeologist and thus would inspire no "pot hunting." Comparison with dune use by the public in other areas indicates no interest by users in collecting or damaging these kind of resources. Thus I was not persuaded that a limited opening of the Dunes themselves together with use of an already existing road would endanger the cultural resource values.

* * * My decision was based upon my personal knowledge of the area, my personal involvement in public review and my knowledge of use in other dune systems in the CDCA. It is true, as cited in the SCSR [Sierra Club Statement of Reasons], that I had staff recommendations against opening the Dunes. These were based largely on a presumption that dune buggy use per se would impair wilderness values. I disagreed, and still do. Specific examples abound even among the SCSR exhibits that tracks obliterate after wind and rain. Further, opening of less than 600 acres certainly could not impair values within a 90,427 acre area, particularly where access already exists. The same can be said for the cultural resource recommendations. The values cited were not within

the area opened and the presumption that people "might go over to sites" just was not supportable. [Emphasis in original.]

(BLM, Answer, Appendix A at 2-4).

The record shows, and the District Manager admits, that he and BLM staff members disagreed on the impact ORV use would have on the Dunes. Chapter IV of the Proposed Plan Amendments/Draft EIS, entitled "Environmental Consequences," was incorporated by reference into the RMP ^{7/} It states that an amendment to change the status of ORV use on the Dunes from closed to open

would create major adverse impacts on the wilderness values of the Panamint Dunes Wilderness Study Area (WSA). * * * The wilderness area topographically is a natural bowl; the Dunes are near the bottom of the bowl, at its center. Impacts would result from removal of the "core" of the suitable area, and would reduce the size, natural condition, opportunities for solitude, scenic values, cultural and historic values, and the diversity of land-form proposed as CDCA Wilderness. Most importantly, the proposed action would create an unmanageable situation for portions of the suitable area due to the intrusive sights and sounds of man from the open area, and because of the lack of recognizable, manageable boundaries. [Emphasis added.]

(Proposed Plan Amendments/Draft EIS at 4-5).

According to the Proposed Plan Amendments/Draft EIS the Dunes are rich in archaeological sites. It describes the archaeological sites:

There are 66 recorded archaeological sites within or immediately adjacent to the [area] proposed to be changed from closed to open. These sites run the gamut of site types found on the California desert, including rock alignments and cairns, stone tools and projectile points, shelters, grinding stones, pottery, stone bowls, and temporary camps marked by hearths, rock circles, and artifact scatters. A number of highly diagnostic projectile points have been recorded here, including Lake Mojave/Silver Lake, Elko-eared Amargosa, and Pinto points. Many of the tools found here are highly patinated and extremely weathered, conditions which may indicate great age. Stylistically, many of the tool types are considered to be of very early origin as well. Rock alignments and cairns are known to have considerable special significance to living Native Americans. It is also near a Panamint/Shoshone pinion collection area still in use today. This entire complex of sites is in association with a Pleistocene lakebed, and geoenvironmental conditions in the area make it an ideal location for paleoecological and paleoclimatic studies. Such

^{7/} The EA for the RMP states that the "environmental consequences of this action are discussed in Chapter 4 of the Draft EIS of the 1982 Desert Plan Amendments." RMP at 21.

Pleistocenelacustrine site complexes are among the most important archaeological manifestations on the California desert in terms of yielding information on past environmental conditions and human adaptation to changing environments. These lacustrine site complexes can yield types of information available from no other source. Dr. Emma Lou Davis has maintained an on-going research interest in this area for more than two decades which has resulted in a steadily growing body of data (Davis, 1969). Although much still remains to be accomplished here [sic].

The area exhibits an unusually high site density and complexity for the California desert. Based on existing records, a site density of 15 sites per square mile has been predicted (Coombs: 1978). This indicates a potential for many as yet undiscovered archaeological sites. The scientific value of the area is extremely high. Based on previously known data and Desert Plan inventory data, the eastern 75 percent of the areas was rated in the Desert Plan as having very high sensitivity and the western 25 percent as having high sensitivity.

(Proposed Plan Amendments/ Draft EIS at AF-1). In describing the cultural resource damage that would occur from ORV use on the Dunes, it states:

Increased off-road vehicle use would result in permanent damage to, or complete destruction of many, if not all, of the archaeological and Native American values documented. Most of the archaeological materials are surface manifestations, which leave them completely vulnerable to any form of surface disturbance. Not only does vehicle activity damage artifacts, but it also destroys crucial relationships between various components of an archaeological site by moving artifacts out of their original locations. Vehicle activity can also cause minor increased or accelerated erosion of soils, which can result in the loss of internal relationships at an archaeological site or disturbance of subsurface materials. Scientific data that could do much to increase knowledge of the history of man in the southwest would be lost.

In addition to irreversible damage or complete destruction of the information and scientific values contained in the known archaeological sites, many more as yet unknown sites would suffer.

* * * * *

Finally, loss of or damage to archaeological materials would have serious consequences for a 20-year research project devoted to studying these materials. Although there are [a] number of locations in the California Desert with excellent research potential, this is one locality in which that research potential has been realized. The unique potential of Northern Panamint Valley for reconstructing paleoclimates and for understanding human cultural responses to changing climatic conditions led Dr. Emma Lou Davis to select this area over others. The

information obtained by Dr. Davis' Great Basin Foundation has significance for our understanding of paleoprehistory (beginning 10,000 years ago) not merely locally, but on a regional and perhaps national basis.

(Proposed Plan Amendments/Draft EIS at 4-4.)

In the Proposed 1982 Plan Amendments/Final Environmental Impact Statement (Proposed Plan Amendments/Final EIS) BLM described Alternative B which was eventually selected by the District Manager in his ROD. Therein, BLM noted that the types of impacts set forth for Alternative A "would still occur under alternative B." BLM conceded that "[a]nother problem with this alternative [B] might be keeping users within the confines of the designated open area and access route." Proposed Plan Amendments/Final EIS at 4-14-4-15.

In support of their position that the District Manager had no basis for his action, appellants submitted certain exhibits with their SOR to further show BLM staff disagreement. Exhibit A is copy of a July 21, 1982, memorandum from the Outdoor Recreation Planner, Ridgecrest Area Office, to a California Desert District Employee stating:

Below are concerns with impact analysis on amendments dealing with and/or affecting WSA's within the Ridgecrest Resource Area Office:

-Amendment #5 Area for change within WSA 127, Panamint Dunes.
Suitability of Area would be impacted if dunes were opened. Recommend rejection.

In a January 20, 1984, memorandum the BLM Project Area Manager, Southern California Metropolitan Project Area, informed the Riverside Area Manager, based on his review of certain records and an on-site observation, "it is not in the best interest of the cultural resources to open the Panamint Dunes to vehicular use until a detailed plan is established which will allow for a more thorough documentation of the resources." SOR, Exh. F.

Appellants further provide as Exhibit D a copy of a November 9, 1983, memorandum to the WSA 127 file from the California Desert District Wilderness Coordinator stating

[d]amage to, or removal of "features of scientific, educational, scenic, or historic value" must not "significantly constrain the Secretary's recommendation with respect to the suitability or non-suitability for preservation as wilderness." Because cultural values are a primary reason for the suitability recommendation, extreme caution must be exercised to insure that "significant" loss of these values does not occur.

Appellants also submit the statement of Jan Bouck Moore Lawson, dated April 29, 1984. Therein, she states she is a professional archaeologist who has worked in that capacity in the California Desert/Great Basin regions for

the "past 6 years," specifically being employed by BLM from August 1979 to August 1983 as the area archaeologist in the Ridgecrest resource area.

She assisted the desert planning staff in compiling and analyzing archaeological data in the CDCA. She states "[the Dunes] contains a unique archaeological resource that will inevitably be severely impacted if the Dunes are opened." Lawson Statement at 6. She believes the greatest damage will result from the indirect impact of opening the Dunes -- the ORV activity beyond the area actually legally opened.

On June 17, 1983, BLM contracted with the Great Basin Foundation (GBF) to do a cultural resource survey of the Dunes. In a statement accompanying the SOR, Clark Brott, Director, GBF, stated it surveyed 830 acres and recorded 28 archaeological sites in the fall of 1983. He predicted there are 150 sites at or near the Dunes. Brott shares Lawson's concerns. He stated GBF observed "substantial and increasing damage to the subdunes and to archaeological sites in the subdunes by tracks of dirt bikes, ATV's and four-wheel vehicles." The damage, he noted, occurred when the area was officially closed to ORV use. Brott described the damage from ORV's as "sudden and total." He concluded that BLM's surveillance and monitoring plan is inadequate "in the face of the potential danger versus the value of the resource." Brott Statement at 3-4.

BLM's response to appellants' charge is that the District Manager's statement and the record point out differing professional opinions on the impacts of ORV use of the Dunes and that Hillier resolved that dispute in favor of opening a very small portion of the sandy portion of the Dunes to ORV use on a limited basis in conjunction with a comprehensive monitoring system to measure adverse effects. Answer at 5. BLM then cites Sierra Club, 80 IBLA 251 (1984), as establishing the standard "concerning the professional disagreement by various expert witnesses with the conclusions reached by the authorized officer." Answer at 6. Therein, the Board stated:

The Board further finds that the professional disagreement by various non-federal witnesses with the findings and conclusions reached by the federal personnel charged with responsibility for the accomplishment of the EIS is insufficient to discredit that accomplishment. Differing viewpoints and analyses of the same problem are endemic among professionals of every academic discipline, and if each were permitted to discredit the work of his or her colleague, nothing would ever be achieved. Those who participated in the preparation of the EIS were, without exception, well qualified to perform their respective assignments, and there is nothing to suggest any absence of good faith or diligent effort in their performance.

Id. at 266.

As appellants correctly point out in their reply brief, BLM's reliance on Sierra Club is misplaced. The Sierra Club case described the standard where there is professional disagreement between BLM experts and private experts. The present case, however, involves a record replete with BLM professional opinion expressing grave reservations about opening the Dunes to

ORV use. The BLM staff opinion in this case is buttressed by the opinion of private experts.

[2] BLM has the responsibility of administering the public lands and must be accorded the discretion necessary effectively to discharge its duties. So long as BLM's management decision is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it, absent a showing of clear reasons for modification or reversal; see A.C.O.T.S., 60 IBLA 1, 4-5 (1981); Oregon Shores Conservation Coalition, 83 IBLA 1, 5 (1984); Curtin Mitchell and Stand, 82 IBLA 275, 277-78 (1984); Magic Valley Trail Machine Association, 57 IBLA 284, 287 (1981).

Although the District Manager substantially reduced the actual acreage open to ORV use in approving the RMP, the RMP specifically stated that the environmental consequences of the action were the same as discussed in Chapter 4 of the Proposed Plan Amendments/Draft EIS. Those adverse consequences are set forth, supra. In addition, the draft RMP, dated October 1983, analyzed the opening of 500 acres of the Dunes and solicited comments. The draft EA, which was part of the draft RMP, stated, concerning mitigation measures:

Amendment	Impact	Mitigation of Mitigation	Effectiveness
5	Degradation of wilderness, wildlife, and cultural resource values from lack of areas. <u>Will not</u> controls on off-road vehicle use. Adjacent wilderness manageable.	An enforcement plan will be developed at time of implementation. <u>prevent serious impact on cultural resources or wild-</u>	Will curtail "spillover" impacts into adjacent Class C enforcement of con- <u>impact on cultural</u> would not be <u>life.</u>

Draft RMP at 22 (Emphasis added). However, in the RMP at page 22 BLM stated:

Amendment	Impact	Mitigation of Mitigation	Effectiveness
5	Degradation of Wilderness, wildlife, and cultural resource values from lack of enforcement of controls on off-road vehicle use. Adjacent wilderness would not be manageable.	An enforcement plan will be developed and is included in Appendix H. <u>A full inventory of the area for cultural resources will be completed before opening.</u> A Monitoring Plan, establishing site	Will curtail "spillover" impacts into adjacent Class C areas. <u>Will protect sensitive cultural sites.</u>

plots, will be completed before opening.

(Emphasis added.)

While the change in the "Effectiveness of Mitigation" section is apparently based on the development of the enforcement plan included as Appendix H, it is difficult to understand how that change could be made prior to completion and analysis of the cultural resource inventory. How could BLM conclude that the mitigation measures would "protect sensitive cultural sites" when "full inventory of the area for cultural resources" had not been completed? ^{8/} Moreover, the record reveals the amount of acreage open to ORV use may not be as critical as the actual opening itself, since many of the impacts of ORV use are indirect in the sense that they involve use outside the designated "open" area and associated activities which could adversely affect archaeological and cultural values.

With regard to enforcement, BLM's official position is that law enforcement personnel can provide an adequate safeguard against indirect impacts. The Cultural Resources Documentation prepared by BLM in conjunction with the RMP states:

This position is viewed with contention by the archaeological community familiar with the Panamint Dunes for the following reasons:

1. The dunes area has been legally closed (signed and patrolled) for a number of years. Use of the dunes and surrounding area have continued unchecked, and damage to cultural resources has ensued;
2. Designation of a narrow access corridor and the small area of the dunes will be extremely difficult to enforce, more so than the current closure.

Should these doubts be proven on-the-ground, cultural resources with recognized National Register potential (including a human burial) could be adversely impacted. To ensure the effectiveness of the BLM enforcement program, a system of regular monitoring at key sites within one mile of the proposed action (defined area of direct impacts) should be incorporated into the management of the dunes. A minimum of 10 sites selected at varying distances from the dunes and the access route should be subjected to detail mapping and photo recordation. These sites should be visited at regular intervals (four times annually during the first two years). ^{9/}

^{8/} Even though the RMP was not approved until May 1984, this part of the RMP was apparently completed prior to submission of the GBF report.

^{9/} Although this document is undated, it was obviously prepared prior to completion of the GBF study, since it states:

SOR, Exh. I at 6. It further provided that if there was a 15 percent deterioration of those sites, the permit system should be suspended and the management program reevaluated.

Appellants argue that enforcement will be difficult, if not impossible. Appellants have provided a copy of a page dated November 28, 1983, from an unidentified document which expresses the concern of the California Desert District office with "[i]nsufficient funding for use supervision of several key special management areas -- Panamint Dunes * * *." Clearly, in order to be effective any monitoring plan must have funding for implementation. Appellants have raised a question whether BLM will be able to provide the necessary supervision to insure preservation of the cultural resources. 10/

The record in this case does not support the decision of the District Manager. Section 603(c) of FLPMA, 43 U.S.C. § 1782(a) (1982), requires BLM to manage WSA's in a manner so as not to impair their suitability for preservation as wilderness and to take any action required to prevent unnecessary or undue degradation of the lands and their resources. Exec. Order No. 11989 provides that where ORV use in wilderness areas will cause or is causing considerable adverse effects on cultural or historic resources, the land in question should be immediately closed.

There is no question that cultural resources are wilderness values. Likewise, the record is replete with references to the archaeological significance of the Dunes, and, in fact, the Dunes have been officially closed to ORV use since 1980. The record shows no change in circumstances that would justify opening the Dunes, no matter how limited the area. In fact, further survey of the Dunes area has led to a heightened awareness of the cultural value of the Dunes. According to the present record, the risk of opening the Dunes to ORV use with the predicted adverse consequences (principally of an indirect nature) outweighs any demand for an ORV use area. Nor does it appear that the proposed monitoring plan could insure preservation of the resource. We find opening the Dunes to ORV use could lead to unnecessary degradation of the cultural resources in the WSA. Thus, consistent with section 603(c) of FLPMA, supra, maintenance of the closed status of the Dunes

"Additional cultural resources inventories have been initiated in the general project area by the Great Basin Foundation, acting under a contract with the Bureau of Land Management. Final results of the contract will not be available until January, 1984. Based on preliminary data, at least 34 additional sites have been located on public lands within a mile of the proposed project. * * * These sites include a cremation, temporary camps, and hunting camps. Diagnostic artifacts, pottery, groundstone and fragmentary bone have been recorded."

10/ We recognize that BLM has entered into a memorandum of understanding (MOU) with the Inyo County Sheriff's Office allowing the county to provide enforcement patrol services in the Dunes area. However, BLM would remain principally responsible for enforcement, and the county would be utilized on a request basis. The MOU states that the Sheriff will evaluate requests and "all requests will be prioritized according to current needs in the County and responses could be limited or withheld." RMP at 31.

is required. The District Manager's decision approving the RMP must be reversed as not supported by the record. 11/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

11/ Because of our disposition of the case on this issue we need not address the other arguments raised by appellants.

